IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 6099 of 2006
Date of decision:September 25,2006

Dr.Suresh Kumar and others V. State of Haryana and others

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL
HON'BLE MR. JUSTICE H.S.BHALLA

Present: Shri Rakesh Nehra,,Advocate, for the petitioners.
Shri Ashok Jindal,Additional Advocate General,Haryana for respondents No.1 to 3.
Shri V.D.Sharma,Advocate for Mr.R.S.Tacoria,Advocate for respondent No.2.
ShriR.K.Malik,Advocate, for respondents No. 5 to9,12, and 15.

Viney Mittal,J.

This judgment shall dispose of Civil Writ Petitions No.6099 and 11024 of 2006 as the controversy involved in both the cases is common.

At the out-set, it may be noticed that the petitioners in C.W.P. No.11024 of 2006 had approached the Supreme Court of India under Article 32 of the Constitution of India raising a challenge to a policy framed by the State Government whereby the eligibility for admission to Post Graduate Courses for in service candidates had been reduced from five years service to three years service. However, the aforesaid petition filed by the petitioners was not entertained by the Apex Court and the case has been remitted back to this Court for being treated as a writ petition filed under Article 226 of the Constitution of India. Consequently the aforesaid writ petition is also being disposed of through the present judgment.

For the sake of convenience, the facts are borrowed from C.W.P. No.6099 of 2006.

Vide a notification dated December 22,2005, the State of Haryana nominated and authorised Maharishi Dayanand University, Rohtak as the competent authority to conduct an entrance examination for admissions to MD/MS/PG Diploma in the State of Haryana for the academic session 2006. Consequently, the University issued a Prospectus for the aforesaid purpose in December,2005. As per the prospectus, the last date of receipt of the applications from the eligible candidates was indicated as February 28,2006. Out of a total number of 82 seats in MD/MS Courses, 17 seats were reserved for Haryana Civil Medical Services (HCMS) candidates. Similarly, out a total number of 29 seats for Post Graduate Diploma Courses, six seats were reserved for HCMS candidates. Also out of a total number of eight seats in MDS Courses, in Government Dental College, Rohtak, one seat was reserved for HCMS category. In the prospectus, appendix 'D' was attached, which was a communication dated April 26,2002 from the Financial Commissioner and Principal Secretary to Government Haryana, Health Department to the Director General, Health Services, Haryana and Director,PGIMS,Rohtak, conveying the policy regarding higher studies for doctors in the Department of Health and Medical Education. In the aforesaid policy decision, it was laid down that “in service candidates” for higher studies against a reserved seat were required to “have completed the probation period successfully and completed five years service under the State government including the probation period out of which three years service should be rural area/service .” Additionally a candidate

applying under the in-service category was also required to obtain a “No Objection Certificate” from the competent authority before submitting the application form for admission to the Course. The general condition in Part-A of the policy contained in Appendix 'D' reads as follows:

> “1. HCMS/HMES doctors serving in connection with the affairs of the State Government in the Health Department and those serving in the PGIMS, Rohtak may be allowed to apply for and seek admissions in various academic courses leading to PG Diploma/PG Degree/Super Speciality Courses in their respective streams of Medial profession for which they will have to apply for and avail study leave in accordance with the provisions contained under Rule 8. 126 of the CSR Vol.1 part I red with appendix 20 contained in CSR Vo.1 Part II or Leave of the kind due as admissible under the rules.”

On February 24,2006, another communication was issued by the Financial Commissioner and Principal Secretary , Government of Haryana, Health Department addressed to the Director General Health Services,Haryana, Director PGIMS Rohtak, all Civil Surgeons in the State of Haryana , communicating the revised policy regarding higher studies for doctors in the Department of Health and Medical Education and PGIMS, Rohtak. As per the revised policy, an “in-service candidate” was eligible to apply for the said PG Course, if he has “ completed the probation

period successfully and completed three years service under the Stte Government including the proba;tion period out of which two years service should be in rural areas.” However, the condition of rural area service was not to be applicable in the case of HMES candidates.

Part 'A' of the general conditions of the revised policy reads as under :

> 1.HCMS/HMES Doctors serving in connection with the affairs of the State Government in the Health Department or those serving in the PGIMS Rohtak may be allowed to apply for seeking admission in various academic course leading to PG Diploma/PG Degree/Super Speciality Courses in their respective streams of Medical Profession for which they will have to apply for and avail study leave under the relevant rules.”

It was also stipulated in the revised policy that the said policy is subject to the amendment in the CSR Vol I Part II (Appendix-20).After the revised policy was issued by the State Government, a corrigendum was published on February 27,2006 in the newspapers to notify the revised eligibility criteria for admission to the PG Courses. The last date for application was also extended upto March 7,2006, for candidates of all the categories.

For the purpose of admission to the aforesaid PG Courses, after issuance of the revised policy, as noticed above, an entrance test was conducted on March 12,2006. The present petitioners and the private respondents No.5 to 30 and a number of other eligible

candidates appeared in the aforesaid entrance test. The result of the entrance test was declared on March 13,2006.

The petitioners have maintained that many candidates (including private respondents No. 5 to 30) having merely three years service have cleared the entrance test and, as such, have been admitted to the aforesaid PG Courses. According to the petitioners, the seats occupied by such persons were in fact meant for HCMS candidates having more than five years service, such as the petitioners. It is, in these circumstances, that the petitioners have approached this court through the present petition. Primarily they have raised a challenge to the revised policy dated February 24,2006, annexure P/3 and as a consequence thereof have raised a challenge to the counselling in which the private respondents No. 5 to 30 had participated.

The claim of the petitioners has been contested by the respondents. A written statement has been filed by respondent No.1, State of Haryana wherein the revised policy dated February 24,2006 has been defended. A separate written statement has been filed by respondent No.2 Maharishi Dayanand University, wherein also a reliance has been placed on the revised policy framed by the State of Haryana. The private respondents have adopted the reply filed by respondents No.1 and 2.

We have heard Shri Rakesh Nehra, learned counsel appearing for the petitioners, Shri Ashok Jindal,learned Additional Advocate General, Haryana for respondents No.1 and 3 and Shri R.K.Malik, learned counsel appearing for private respondents at some length and with their assistance have also gone through the record of the case.

Shri Rakeh Nehra, learned counsel appearing for the petitioners has raised the following arguments :

(a) As per the past practice and policy followed by the State Government, in service HCMS candidates having five years of service, under the State Government were only eligible for higher studies, against the reserved seats and at the time of the issuance of the prospectus in December,2005, the said policy had been continued and even indicated in annexure 'D' appended with the prospectus. In these circumstances, the learned counsel has maintained that there was absolutely no justification to change the aforesaid policy later on, after the issuance of the prospectus.

(b)As per the policy Annexure 'D' in the prospectus, a general stipulation was contained in para -A thereof that HCMS/HEMS doctors serving in connection with the affairs of the State Government were allowed to apply for and seek admission in PG Diploma/PG Degree Courses etc. for which they were required to apply for and avail study leave in accordance with Civil Service Rules. According to the learned counsel since study leave was not permissible for HCMS employees, having less than five years of service, therefore, such a candidate could not be treated to be eligible.

(c) Even the revised policy Annexure P/3 dated February 24,2006, whereby the eligibility condition has been reduced from five years service to three years service, specifically provided in part A thereof, that a candidate seeking admission in the aforesaid category was required to apply and avail study leave under the relevant rules. According to the learned counsel, the said policy has specifically provided that the same was subject to the amendment in CSR Vol I Part II (appendix-20) and since no such amendment has been carried out in Civil Service Rules, therefore, the said policy could not be treated to have become operative.

All the aforesaid arguments have been refuted by the learned counsel appearing for the respondents.

S/Shri Ashok Jindal, learned Additional Advocate General,Haryana and R.K.Malik, learned counsel appearing for the respondents have contended that the prospectus for post-graduate courses had been issued for conducting entrance examination in December,2005. The entrance examination was schedule to be held in the month of March,2006. However, prior to the last date for submitting the application, a decision has been taken by the State government, whereby the eligibility conditions for HCMS candidates have been revised and on revision of the aforesaid policy, the last date for submission of the application was also extended to March 7,2006 for all categories. Learned counsel have maintained that the said policy decision has been taken by the State Government in

public interest, with a purpose to raise the number of qualified doctors for providing the medical facility for common masses, even residing in the remote rural areas of the State.

Shri Jindal has contended that the State Government was absolutely competent to revise its policy and there was no vested right which had accrued in favour of the petitioners on the basis of the old policy, which had been issued in the year 2002.

Even the second argument raised on behalf of the learned counsel for the petitioners has been contested by the learned counsel for the respondents. It has been pointed out that as per part 'A' of the revised policy Annexure P/3 (as reproduced above), although a candidate applying for the reserved HCMS/HMES category was required to obtain study leave under the relevant rules but as per Rule 3(5) of Appendix 20 of Punjab Civil Service Rules Vol.I Part II, there was no impediment for an employee having less than five years of service, to get the study leave, since the State Government could grant such a study leave, even to an employee having less than five years service.

Refuting the third argument raised by the learned counsel for the petitioner, it has been maintained by the learned counsel for the respondents, that although it was stipulated in the revised policy Annexure P/3 that the same was subject to the amendment in CSR Vol.I Part II Appendix 20 but later on in the meeting of Council of Ministers held on August 17,2006, a proposal was taken up to amend the such rules but the same was withdrawn. According to the learned counsel, since the amendment to the said rules was wholly unnecessary, because the Government already had a power to grant the study leave to an employee having less than five years

of service, therefore, no amendment of the rules was necessitated.

We have duly considered the aforesaid arguments of the learned counsel for the parties with some anxiety. We have given deep consideration to the entire matter. We are satisfied that the grievances raised by the petitioner in the present petition are wholly without any basis.

Nothing has been pointed out by the learned counsel for the petitioners that the State Government was not competent to revise/re-frame the policy regarding higher studies for doctors in service in servicein the Department of Health and Medical Education. A policy was originally framed by the State Government on July 26,2002 (Annexure 'D' in the prospectus). The said policy has been revised by the same competent authority when a new revised policy has been issued on February 24,2006. In the original policy Annexure 'D', the eligibility conditions for an “in-service candidate” was five years of service whereas the said condition in the revised policy has been fixed as three years of service. We do not find any reason to hold that the State Government was not competent to revise the said policy. The aforesaid decision has been taken by the State Government keeping in view the requirements of the State as well as public interest, as stated in the written statement. The aforesaid matter being a question of policy is best left to the discretion of the policy makers. Once the competence of the State Government is not in question, no further question arises with regard to the desirability thereof.

The second argument raised on behalf of the petitioners, also is without any basis. Part A of annexure 'D' appended with the prospectus (as extracted above) stipulated that an HCMS

candidate was required to apply for and avail study leave in accordance with Civil Service Rules or avail leave of the kind due as admissible under the Rules. In the corresponding Part A of the revised policy (also extracted above), it has been stipulated that an applicant seeking admission to PG Course was required to apply for and avail study leave under the relevant rules. The only question which requires consideration is as to whether a candidate/employee having less than five years of service with the State Government is entitled to have study leave or not. In this regard reference may be made to Rule 3(5) of Study Leave Rules,1963, which form appendix-20 of Public Civil Service Rules Vol.I part II. For the sake of ready reference, Rule 3(5) may be extracted as follows :

> "(5) Study leave shall not **ordinarily** be granted to a Government employee-
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> (i) who has rendered less than five years' service under the Government: or
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> ii) who does not hold a gazetted post under the Government; or
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> (iii) who is due to retire or has the option to retire from the Government service with in five years of the date on which he is expected to return to duty after the expiry of the leave."

A perusal of the aforesaid rule clearly depicts that although it has been stipulated that study leave would not ordinarily be granted to a Government employee who has rendered less than five years service under the Government but mere use of the work

"ordinarily" shows that the State Government is competent to grant study leave even to an employee having less than five years of service also. Thus, an employee who wishes to pursue higher studies/ PG Courses and is having less than five years of service is also entitled to obtain study leave,of course subject to the discretion of the Government. Thus, it cannot be suggested on behalf of the petitioners, that Government doctors having less than five years of service being not entitled to get study leave under the Civil Service Rules, were not even eligible to avail of the reservation for in service candidates".

The third arguments raised on behalf of the petitioners also does not merit any acceptance.

Although the revised policy Annexure P/3 does stipulate that the aforesaid admission is subject to the amendment in Civil Service Rules, Vol. I Part II appendix 20 and the aforesaid rule has not been amended so far, but as noticed above, no amendment of the rules was required or necessary for the purpose of grant of study leave to an employee having less than five years of service. Minutes of the meeting of the Council of Minister held on August 17,2006 have also been produced before us. Item No. 4 of the minutes shows that a proposal was mooted for amendment of Pubjab Civil Service Rules Vol. I, Part II in appendix 20. However, the said proposal was withdrawn. As argued by the learned counsel for the State, it is apparent that no such amendment was in fact required. The State Government already has the power to grant study leave to an employee having less than 5 years service under Rule 3(5) of the said leave rules. Once the aforesaid power already exists, no further amendment was necessary.

No other point has been urged.

In view of the aforesaid discussion, we do not find any merit in the present petitions. The same are consequently dismissed.

(Viney Mittal)
Judge

September 25,2006
sks

(H.S.Bhalla)
Judge